**THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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**WRIT PETITION No. 8653 OF 2005**

**Dated 19th April 2007**

**Between:**

Yogesh Kandlikar & others

…Petitioners

and

The State of A.P.rep. by its Principal Secretary,
Housing, Secretariat, Hyderabad & another.

…Respondents

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**WRIT PETITION No. 8653 OF 2005**

**O R D E R:**

This writ petition was initially filed by 5 petitioners. Petitioners 1 and 2 have withdrawn the writ petition, insofar as it relates to their claim.

The 2nd respondent, i.e. the Andhra Pradesh Housing Board, (for short "the Board") issued an advertisement, inviting applications for sale of High Income Group (HIG) and Middle Income Group (MIG) flats, indicating the salient features of the scheme. It was pointed out that an allottee shall have to pay the cost of the flat in 6 instalments, at different intervals. The last of the instalments, covering 10% of the cost, is to be paid, while taking over the possession of the flat. The petitioners applied and were allotted the HIG flats. Letters of allotment, dated 24.9.2002, were issued, followed by allotment letter-cum-notice for payment, dated 27.5.2003 was issued. It was mentioned *inter alia* that the payment, beyond the schedule date, would invite levy of

interest, at 10%. It was also agreed that if the possession of the flat is not delivered, within the stipulated time, the Board would be under obligation to pay a sum of Rs.3,000/- per month, to the allottees.

No controversy existed up to the payment of 5th instalment. Correspondence ensued between the Board and the petitioners, about the progress of the work, provision of other amenities, such as, car parking, maintenance fund, etc. It was through letter, dated 1.3.2005, that the Board informed the petitioners that the flats would be ready by 11.3.2005, for being handed over, and the petitioners were required to pay the balance of 10% of the cost. It was also pointed out that the petitioners shall pay further amounts, towards maintenance fund, car parking, etc.

On 18.3.2005, one of the petitioners addressed a letter, stating that he visited the flats on 13.3.2005, and found that they are not fit for occupation. Therefore, he requested the Board to hand over the possession of the flat with the promised infrastructure, or pay Rs.3,000/- per month, as promised by the Board. He also expressed his willingness to pay the last instalment, representing 10% of the cost, as soon as the infrastructure is provided. There is a dispute, as to when the necessary infrastructure is provided.

This writ petition was filed, with a prayer to declare the letter, dated 1.3.2005 issued by the Board, as illegal and arbitrary, and to direct the respondents, to execute the sale deeds, after providing necessary infrastructure, or in the alternative direct them to pay a sum of Rs.3,000/- per month, till the date of registration of sale deeds. During the pendency of the writ petition, the petitioners have paid the last instalment also. The Board, however, took the view that the petitioners are liable to pay a further sum of Rs.91,000/-, representing

the difference of cost from the left over 10%. Affidavits and counter affidavits are filed, touching these subsequent developments also.

The respondents contend that the petitioners did not pay the instalments, as per the schedule, and in accordance with the general decision taken with the approval of the Government, the prevailing market value was charged, for that part of the consideration, which remained unpaid, and as soon as the petitioners comply with that, the possession thereof, would be delivered and sale deeds would be executed.

Smt.Vijayalaxmi, learned counsel appearing for the petitioners, submits that there was absolutely no lapse or default, on the part of the petitioners, and it is the Board, that did not adhere, to the schedule for completion of the construction and handing over the possession. She contends that while the other instalments were required to be paid by a particular date, the last instalment is to be paid, on the date of delivery of possession of the flat, and there is absolutely no justification for the Board, in levying penalty without delivering possession of the flat.

Learned Standing Counsel for the Housing Board, on the other hand, submits that in spite of repeated demands and requests, the petitioners have not paid the last instalment on time, and the Board demanded a sum of Rs.91,000/-, on the basis of a policy decision.

The transaction between the petitioners, on the one hand, and the Board on the other hand, went on smoothly, from the stage of allotment, till the payment of 5$^{th}$ instalment, except for the delay of few days in payment of one or two such instalments. According to the time frame prescribed by the Board, the flats were to be made ready for

occupation, by 31-12-2004. It is but natural that in a project of such a magnitude, delays are bound to occur, in the matter of completion of construction. In March 2005, the Board addressed letters to the petitioners, to pay the balance 10% of the consideration and get the sale deed registered. On physical verification, the petitioners found that the flats are not ready for occupation, and a letter was addressed to this effect. The record does not disclose that any reply was given to this. All the same, the petitioners paid the last instalment also, in April 2006. There is roughly delay of one year, assuming that the flat was ready for occupation, in all respects, by April 2005.

Default was committed in payment of various instalments by number of allottees. Having regard to the generality of the problem, the Board, in consultation with the Government, took a decision to the effect that the allottees, who committed default,
be given an opportunity, to pay the balance of the instalments, by calculating the rate, as per the prevailing market value for the left over portion. For instance, if the cost of the flat was calculated, at the rate of Rs.650/- per sq.foot, at the time of allotment, for the left over portion, it was calculated at Rs.1,250/- per sq.foot.

Whatever be the justification for such a course being adopted, for the allottees, who did not pay the instalments, which are required to be paid by a particular date; application of the same, *vis-à-vis* last instalment, cannot be permitted. As observed earlier, the obligation to pay the last instalment arises, only when the flat is ready for occupation. The failure on the part of the allottee, to occupy the flat and pay the balance of 10% of the cost, would entail in two consequences. The first is that the Board is extricated from the liability to pay a sum of Rs.3,000/- per month, to the allottees, towards

damages. The second is that the allottee would be liable to pay interest at 10%, as provided for under the letter of allotment. Therefore, there was no justification for the Board, in levying additional amount towards present market value on the left over 10%.

There is some lapse on the part of the petitioners also. In case, there existed any factors, disabling them from occupying the flats, they should have paid the balance of 10%, and worked out their remedies. There is delay of almost one year, in payment of the last instalment. Pendency of the matters of this nature, in one forum, or the other, would only bring about further complications and discomfort to the persons, who wanted to have a shelter of their own, by spending life time earnings. Having regard to the totality of the circumstances, this court is of the view that the entire controversy can be given a quietus, by directing the petitioners, to pay a further sum of Rs.25,000/-, and directing the respondents to deliver the possession of the flats and thereafter execute the sale deeds.

For the foregoing reasons, the writ petition is disposed of, directing that;

a) The petitioners shall deposit a further sum of Rs.25,000/- (twenty five thousand) instead of 91,000/- (Ninety one thousand) towards cost of the flats allotted to them, as well as the other stipulated amounts towards cost of car parking, maintenance fund, etc, within four weeks from today.

b) On such payment, the A.P. Housing Board shall deliver the possession of the respective flats to the petitioners and execute the sale deeds, within 15 days, from the date of such payment.

There shall be no order as to costs.

**19th April 2007**

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